

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 212 of 1982

WITH

CIVIL APPLICATION NO. 1932 OF 1982

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARENDRASING JAYENDRASHING VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MS PG DAVAVALA for MR KN RAVAL for appellant

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 10/11/98

ORAL JUDGEMENT (Per Patel, J.)

The appellant, being aggrieved by an order of summary rejection of his Special Civil Application No. 992 of 1982 on 9.4.1982, has preferred this appeal.

2. From the compilation, it transpires that the appellant was working as a Constable in the Police Department in Junagadh District. It appears that thereafter, he was brought as a Constable in Ahmedabad City. He fairly stated that he was transferred at his own request. The grievance made by the appellant is that though he has served in the police department and though no stigma is passed against him, he was not given any promotion and juniors to him were promoted, and, therefore, ultimately, the petition was filed. Earlier, there was reversion which was not challenged by him. So far as juniors who are alleged to have been promoted, we put a pointed question to the learned advocate as to what is the material on record to show that juniors were promoted or what was his serial number in the seniority list out of which juniors were promoted. Learned advocate fairly stated that no such details are available with the appellant. In the affidavit in reply filed before the learned Single Judge, it was pointed out that length of service alone is not the criteria; Promotions are given on the basis of seniority-cum-merit; The appellant was found unfit for promotion to the post of Head Constable, and hence his case was not considered. Record prior to 1976 is not available with the department and, therefore, nothing is stated in the affidavit. However, it is stated that in the years 1976, 1977, 1979, 1980 and 1981, the case of the appellant was considered but he was not found fit by the committee and hence he was not given promotion. Learned advocate has made a grievance that that along with the affidavit, no material is produced. Suffice it to say that there is word against word; Learned advocate for the appellant has also not called upon the respondent to produce any material. It appears that the appellant was promoted in the year 1982, as stated by the learned advocate. It is also stated that he has retired from the service.

3. Learned advocate submitted that the petition may be disposed of with a permission to the appellant to make a representation to the Department to consider his case so far as the promotion is concerned. As stated by the learned advocate, the appellant was promoted in the year 1982. In the affidavit which was filed in the month of March 1982 it was stated that the appellant was not found fit for promotion including the year 1981; However, we are informed by the learned Advocate that immediately after filing of the petition in the year 1982, the appellant was promoted in the same year. It is under this circumstance we direct that the department shall consider sympathetically the case of the appellant and

the Department shall do justice to a retired person, at the earliest. If the appellant submits a representation, the same shall be considered and decided by the Department within a period of three months from the date of submission of the application, in the light of the aforesaid observations of this Court. The appeal stands disposed of accordingly.

4. Ad-interim relief granted in Civil Application No. 1932/82 stands vacated and rule is discharged in view of the order passed in the appeal.

csm./ -----